

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 275

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION

REVIEW FOR GOVERNMENTAL PROJECTS COVERED UNDER

SECTIONS 6E-7 AND 6E-8

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§13-275-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii by articulating a historic preservation review process for state and county projects. The review process is designed to identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore, and maintain historic properties for future generations.

(b) This chapter applies to all state or county agencies funding or directly undertaking a project, or having a project undertaken on lands under its ownership or control which may affect historic properties, or by a state agency transferring any land under its jurisdiction which may contain historic properties. Any proposed project which may affect an historic property shall not be commenced, or, in the event it has already begun, continued, until DLNR, as represented by SHPD, shall have given its written concurrence. This chapter itemizes the process to obtain concurrence.

(c) Participants in the historic preservation review process.

- (1) The primary participants in the process are DLNR, represented by the SHPD, and the agency with jurisdiction over the project. The agency has responsibility for complying with the historic preservation review process. The agency may have others prepare the review process items. In the case of projects involving archaeological properties, the SHPD may request, within five days of receipt of any report or plan, that the agency contract with an authorized review archaeologist to review any submitted reports or plans. The authorized review archaeologist shall submit its findings and comments to the SHPD.
- (2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties. Provisions in these rules enable interested persons to participate in the process. [Eff]
(Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the process of identifying and documenting the architectural historic properties in a delineated area and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Authorized review archaeologist" means an archaeologist who meets the qualifications enumerated in chapter 13-281, and is hired by a person to personally review archaeological reports and plans prepared for the person by another archaeologist.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the agency.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic documentation plan, an historic data recovery

plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Determination letter" means the SHPD's written response which either concurs or does not concur with an agency's proposed project.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property, through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the process of identifying and documenting historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

"Traditional cultural property" means any historic property associated with the traditional practices and beliefs of an ethnic community or members of that community for more than fifty years. These traditions shall be founded in an ethnic community's history and contribute to maintaining the ethnic community's cultural identity. Traditional associations are those demonstrating a continuity of practice or belief until present or those documented in historical source materials, or both. [Eff: _____]
(Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-3 Obtaining a determination letter; generally. (a) For the department to provide a letter of determination, an agency proposing a project which may effect historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties, and any proposed mitigation measures. Upon receipt of adequate information the department will provide a determination letter within ninety days. Any agency involved in the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed, the project may also commence.

(b) The review steps, to be described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;

- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.
- (c) Documents for review steps one through four may be, and usually are, submitted concurrently.
- (d) A receipt date will be stamped on all review documents received by the SHPD.
- (e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.
- (f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no effect" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice of receipt of relevant documents and of issuance of SHPD "no effect" or receipt of information at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them. Any interested person submitting comments on any submittal shall be provided copies of all subsequent SHPD correspondence relating to the proposed project.
- (g) If the agency or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawai'i historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawai'i historic places review board to appeal a SHPD determination. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-3, 6E-7, 6E-8)

§13-275-4 Fees. Each agency request for determination shall be accompanied by a filing fee of \$25. All fees shall be in the form of cash, certified or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS § 6E-3)

§13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel(s) involved and a map shall be submitted to the SHPD to locate and define the boundaries of the project area. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present due to past land disturbances (e.g., bulldozing; intensive cultivation for sugar cane, pineapple, or similar crops; chain dragging of land for cattle pastures; recent urbanization; recent lava flows) or other reasons, then the SHPD will make this determination in the form of a "no effect" letter within thirty days of receipt of the request; or
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting the land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days of receipt of the request.
 - (A) If the SHPD agrees that no significant historic properties are present, then the SHPD shall issue a written concurrence to the agency in the form of a "no effect" determination and historic preservation review ends; or
 - (B) If the SHPD does not find the documentation satisfactory, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey, whichever is required.
- (3) The SHPD will make all "no effect" determinations available to interested persons by posting notice of all such determinations at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working

day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. Should historic properties be reported to the SHPD during these thirty days the SHPD will reconsider its concurrence under the provisions of section 13-275-11.

- (4) If the SHPD determines that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to section 13-275-6.
- (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD will indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey is undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. Specific minimal requirements for this survey are contained in chapter 13-276. An archaeological permit, issued by the SHPD, is required for this survey and any lesser level of archaeological survey work, as set forth in chapter 13-282. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281.
 - (B) An ethnographic survey is undertaken when the SHPD concludes that traditional cultural properties are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.
 - (C) An architectural inventory survey is undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Minimally, information shall be of sufficient quality to complete a National

Register of Historic Places nomination form. The survey must be directed by a qualified historian, architect or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) If an inventory survey is needed, once it is completed, one copy of the inventory survey report shall be submitted to the SHPD for review. If the report is an archaeological report, upon the request of the SHPD the agency shall submit another copy to an authorized review archaeologist, who shall provide the SHPD with comments as to whether the report meets the minimum standards enumerated in chapter 13-276, and specifically discuss any inadequacies. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form(s) for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report will include a summary of the consultation. The SHPD shall inform the agency within fifteen days of receipt of an authorized archaeologist's comments or forty five days of receipt of the report, whichever is longer, if the information contained in the report is adequate or inadequate.

- (1) Any interested persons may comment on the survey report. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the report. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.
- (2) If the SHPD determines that the survey or report is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the report adequate, then the agency will be sent a written notice of acceptance. Once the survey report is accepted, six copies of the report shall be provided to the following repositories: two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office's library, one copy shall be sent to the University of Hawaii at Manoa Hamilton Library Pacific Collection, one copy shall be sent to the Bishop Museum library, one copy shall be

sent to the University of Hawaii at Hilo library, and one copy shall be sent to the local public library nearest to the project area.

(d) If the SHPD gives the report final acceptance and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written concurrence to the project in the form of a "no effect" determination.

(e) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in writing, to the SHPD or the authorized review archaeologist. This information is usually submitted concurrently with the survey report, if historic properties were found in the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criterion:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with one or more of the

following to seek their views on the significance evaluations, particularly to fully evaluate the possibility of properties of cultural significance being present:

- (1) Members of an ethnic group who may have knowledge of traditional cultural properties in a project area;
- (2) Individuals knowledgeable of the history of the project area; or
- (3) Ethnic organizations, such as native Hawaiian organizations, for whom some of the historic properties may have cultural significance under criterion "e".

(d) Significance assessments shall be submitted to the SHPD for review. For archaeological properties, upon the request of the SHPD the agency shall submit the significance assessments to an authorized review archaeologist, who shall provide SHPD with comments evaluating the significance assessments and specifically addressing any questionable assessments. The concurrence of the SHPD is required before significance is finalized. The SHPD shall agree or disagree with the significance evaluations within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the significance evaluations, whichever is longer.

- (1) The assessment shall:
 - (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property; and
 - (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites. Supportive documentation shall be cited (such as inventory survey reports);
 - (C) If an inventory survey has been done to assist these evaluations and if this information is not already on file, five copies of the archaeological inventory survey report (meeting minimal report standards, see chapter 13-276 for archaeology), the ethnographic survey (meeting SHPD report guidelines), or of the architectural National Register Nomination forms shall be submitted to the SHPD; and
 - (D) Evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.

- (2) Any interested persons may comment on the proposed significance evaluations. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the significance evaluation. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.
- (3) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.
- (4) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency. Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.

(e) If there is an agreement that none of the historic properties are significant, then historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no effect" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff: _____] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-7 Determining effects to significant historic properties. (a)

The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No effect". The project will have no effect on significant historic properties; or
- (2) "Effect, with agreed upon mitigation commitments". The project will affect one or more significant historic properties, and the effects will be potentially harmful. However, the agency has agreed to mitigation commitments involving one or more forms

of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction. These effects are potentially harmful.

(c) Effect determinations shall be submitted to SHPD for review and approval. Usually these are submitted concurrently with the survey report, significance assessments, and mitigation commitments. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood. For projects involving archaeological properties, upon the request of the SHPD the agency shall submit their effect determinations to an authorized review archaeologist, who shall provide SHPD with comments evaluating the effect determinations, and specifically assessing any questionable determinations.

- (1) Any interested person may comment on the effect determinations. Comments must be submitted to the SHPD within thirty days of the SHPD posting notice of the receipt of the effect determinations. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.
- (2) If the SHPD disagrees with the effects determinations, a letter that specifies the disagreements shall be sent within fifteen days of SHPD receipt of the authorized review archaeologist's comments or within forty five days of receipt of the effect determinations, whichever is longer. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the effect determinations.
- (3) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within fifteen days of SHPD receipt of the authorized review archaeologist's comments or within forty five days of receipt of the effect determinations, whichever is longer.

(d) No effect determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these

changes are typically non-controversial and require prompt processing, the SHPD shall write its concurrence as a "no effect" determination.

- (1) The SHPD shall post notifications of any such "no effect" determinations at the SHPD office every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons have the opportunity to comment on such determinations within thirty days. At the end of thirty days if objections to the minor changes to the properties are submitted, the SHPD will reconsider its findings under the provisions of section 13-275-11.

(e) When the SHPD agrees that the action will have "no effect" on significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. When SHPD agrees that the project will have an "effect, with agreed upon mitigation commitments", then mitigation commitments and detailed mitigation plans shall be developed by the agency and approved by SHPD, as discussed in section 13-125-7.

[Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the agency to the SHPD for review and approval. For projects affecting archaeological properties, upon the request of the SHPD the agency shall submit the mitigation determinations to an authorized review archaeologist, who shall provide SHPD with comments discussing the mitigation commitments, and specifically addressing any questionable proposals. Usually this proposed commitment is submitted concurrently with the survey report, significance evaluations, and effects determinations, if significant historic properties are present in the project area and will be affected.

- (1) Mitigation can occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, exhibition with interpretation of significance, or traditional cultural activity. Not all of these preservation elements are mutually compatible.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured

drawing of a building, structure or object prior to its destruction.

- (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its destruction. Data recovery may include archaeological mapping, surface collection, excavation, laboratory analyses, and interpretive analyses.
- (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be destroyed.
- (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be destroyed.

- (2) If properties with cultural significance, so evaluated under criterion "e", as defined in section 13-275-6(b)(5), are involved, the agency shall consult with one or both of the following on the proposed form(s) of mitigation, so their concerns can be considered:

- (A) Ethnic organizations, such as native Hawaiian organizations, for whom the historic properties are of cultural significance; or
- (B) In the case of a traditional cultural place, members of the ethnic community who have knowledge of the traditional cultural property.

- (3) The proposed mitigation commitment must include:

- (A) A table of the significant historic properties, indicating which form or forms of mitigation is proposed for each property -- preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
- (B) Brief text justifying these proposed treatments. Similar sites can be discussed together in this justification; and
- (C) If culturally significant properties are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not acceptable, SHPD shall send a letter outlining needed changes, within fifteen days of receipt of the authorized review

archaeologist's comments or within forty five days of receipt of the mitigation commitments, whichever is longer. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the mitigation commitments, whichever is longer. Any interested persons may comment on the proposed mitigation commitments. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of receipt of the proposed mitigation commitments. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD shall reconsider its determination under the provisions of section 13-275-11.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for native Hawaiian burials, following section 6E-43, HRS, and section 13-300-33.

(e) Should either the agency or any interested person disagree with the SHPD's determination letter, the disagreeing party shall within thirty days of the determination letter submit in writing a request for the Hawaii historic places review board to hold a non-judicial appeal hearing in accordance with chapter 91. The intent of the appeal hearing is to provide an informal fact-finding process, characterized by great latitude, in which all parties have ample opportunity to present information to the Hawaii historic places review board for consideration, and answer any questions the review board may have. The request for an appeal hearing shall include:

- (1) A statement indicating which step in the process the appellant believes is in error;
- (2) Information to support the appellant's position; and
- (3) Any other information, including legal memoranda, the appellant may wish the review board to read prior to the hearing.

(f) The review board shall schedule an appeal hearing to be held within thirty days of receipt of the appeal request. The hearing process will proceed in the following manner:

- (1) The review board shall receive testimony from the SHPD on the basis of its written concurrence;
- (2) The appellant will present its basis for appealing the SHPD concurrence;

- (3) Thereafter, the review board will hear and receive testimony from any other interested persons or agencies;
- (4) The review board may ask questions of those testifying before it; and
- (5) Once the review board has reviewed all the written and oral testimony, it will render a decision regarding the appeal within fifteen days of the conclusion of the hearing.

(g) Should either the agency or any interested person be dissatisfied with the decision of the review board, they may within thirty days of the review board decision apply to the governor to take action as the governor deems best in overruling or sustaining the department.

(h) After mitigation commitments are accepted by SHPD, the agency shall provide detailed plans for the mitigation work for SHPD review and approval. For projects involving archaeological properties, upon the request of the SHPD the agency shall submit a copy of the plans to an authorized review archaeologist, who will provide SHPD with comments as to whether the detailed mitigation plans meet the minimum standards, and specifically discuss any inadequacies. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-277. Qualifications of the archaeologist directing this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work, as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the archaeologist directing the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications. Qualifications for the historian, architect, or architectural historian directing this work shall comply with chapter 13-281.
- (3) Historical data recovery plans shall conform with SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform with SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.

- (5) Preservation plans shall meet the minimal standards as provided by chapter 13-278 for archaeological properties and traditional cultural properties and the Secretary of the Interior's standards for historic preservation projects for architectural properties.
 - (A) If preservation plans involve historic properties of cultural significance, the agency shall consult with interested members of the relevant cultural group with which the properties are associated, such as Hawaiian organizations and individuals for any such native Hawaiian properties. The plans shall describe the consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
- (7) If a detailed mitigation plan is not acceptable, SHPD shall send a letter outlining needed changes, within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the plan, whichever is longer. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the plan.
- (8) If the detailed mitigation plans are acceptable, the SHPD shall send a letter of agreement within fifteen days of receipt of the authorized review archaeologist's comments or within forty five days of receipt of the plans, whichever is longer. Once a plan is accepted, work can then proceed on the plan.
- (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan. [Eff: _____] (Auth: HRS §§6E-3, 6E-5.5, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-9 Verification of completion of the detailed mitigation plan.

(a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plan's tasks -- usually in the form of a completion report, with one copy submitted. Projects involving archaeological data recovery reports shall submit one copy of the report to an authorized review archaeologist, who shall provide SHPD with comments as to whether the report meets the minimum standards, and to specifically address any inadequacies.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within thirty days of receipt of the request. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within thirty days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, two step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

(1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the documentation.

(2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is acceptable and that the historic preservation process is concluded. If the completion report is not acceptable, the SHPD shall write a letter within thirty days to the agency

indicating needed changes. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic property(ies) is to occur, the agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with section 13-275-9(a) through (c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the agency indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the request.

(f) Once a final report is accepted, the agency shall ensure that six copies are made available to the same repositories as the survey reports as noted in section 13-275-5(c)(3). [Eff: _____] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-10 Conclusion of the historic preservation review process.

The historic preservation review process ends when:

- (1) The SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) The SHPD agrees that no significant historic properties are present; or
- (3) The SHPD agrees that the project shall have "no effect" on significant historic properties that are present;
- (4) The SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff: _____] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-11 Reconsideration of findings after the process is closed.

(a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-8 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD uncovers new information changing its findings, the SHPD shall advise the agency undertaking the projects of the SHPD conclusions.

(c) If interested persons disagree with the SHPD' conclusions in section 275-11(a) or (b) they may appeal the conclusion to the Hawaii historic places review board, if meetings with the SHPD do not resolve differences. The appeal shall not suspend action on a project, but the agency conducting the project shall take all measures to avoid adverse effects to historic properties during the appeal process.

(d) If the SHPD conclusions identify a previously unknown historic property, then the expedited review process in section 13-275-12 and chapter 13-280 shall be followed.

(e) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request.

[Eff: _____] (Auth: HRS §§6E-3, 6E-5.5, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found during the implementation of a project, then the historic preservation review process is reopened. This action, however, applies only to the

immediate area where a historic property is discovered, and the historic preservation review process is accelerated, following the procedures of chapter 13-280. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-13 Emergency projects. (a) When an agency proposes an emergency project as an essential and immediate response to an imminent threat to public health, safety or welfare as a result of natural disaster or state of emergency as provided by law, the agency shall consult with the SHPD to attempt to develop consensus plans to take into account the effect of the project on significant historic properties. This consensus shall be reached within three working days. If consensus is not reached, appeal to the governor for an immediate decision shall occur.

(b) This section does not apply to projects that will not be implemented within thirty days after the disaster or emergency. Such projects shall be reviewed in accordance with the normal historic preservation review process. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-11) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-14 Penalty. Any violation of this chapter may result in denial or revocation of the SHPD's written concurrence or agreement. [Eff:] (Auth: HRS §§6E-3, 6E-7, 6E-8, 6E-11) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)